

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GERALD HESTER, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

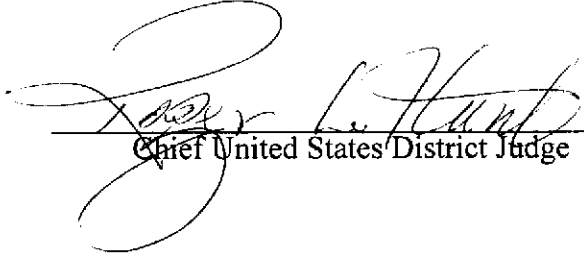
VISION AIRLINES, INC.,

Defendant.

2:09-cv-00117-RLH-RJJ

JURY INSTRUCTIONS

Dated this 9<sup>th</sup> day of November, 2010.

  
Chief United States District Judge

1 Members of the jury, now that you have heard all the evidence, it is my duty to instruct you  
2 on the law which applies to this case. A copy of these instructions will be available in the jury  
3 room for you to consult if you find it necessary.

4 It is your duty to find the facts from all the evidence in the case. To those facts you will  
5 apply the law as I give it to you. You must follow the law as I give it to you whether you agree  
6 with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices,  
7 or sympathy. That means that you must decide the case solely on the evidence before you. You  
8 will recall that you took an oath promising to do so at the beginning of the case.

9 In following my instructions, you must follow all of them and not single out some and  
10 ignore others; they are all important. You must not read into these instructions or into anything the  
11 court may have said or done any suggestion as to what verdict you should return--that is a matter  
12 entirely up to you.

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26 INSTRUCTION 1

1           You may use notes taken during trial to assist your memory. Notes, however, should not  
2 be substituted for your memory, and you should not be overly influenced by the notes.  
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INSTRUCTION 2

1 The evidence from which you are to decide what the facts are consists of:

- 2 1. the sworn testimony of witnesses, on both direct and cross-examination, regardless  
3 of who called the witness;  
4 2. the exhibits which have been received into evidence; and  
5 3. any facts to which all the lawyers have agreed or stipulated.  
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INSTRUCTION 3

1 In reaching your verdict, you may consider only the testimony and exhibits received into  
2 evidence. Certain things are not evidence, and you may not consider them in deciding what the  
3 facts are. I will list them for you:

- 4 1. Arguments and statements by lawyers are not evidence. The lawyers are not  
5 witnesses. What they have said in their opening statements, closing arguments, and  
6 at other times is intended to help you interpret the evidence, but it is not evidence.  
7 If the facts as you remember them differ from the way the lawyers have stated them,  
8 your memory of them controls.
- 9 2. Questions and objections by lawyers are not evidence. Attorneys have a duty to  
10 their clients to object when they believe a question is improper under the rules of  
11 evidence. You should not be influenced by the objection or by the court's ruling on  
12 it.
- 13 3. Testimony that has been excluded or stricken, or that you have been instructed to  
14 disregard, is not evidence and must not be considered.
- 15 4. Anything you may have seen or heard when the court was not in session is not  
16 evidence. You are to decide the case solely on the evidence received at the trial.

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25 INSTRUCTION 4  
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1 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as  
2 testimony by a witness about what the witness personally saw or heard or did. Circumstantial  
3 evidence is proof of one or more facts from which you could find another fact. You should  
4 consider both kinds of evidence. The law makes no distinction between the weight to be given to  
5 either direct or circumstantial evidence. It is for you to decide how much weight to give to any  
6 evidence.

1 In deciding the facts in this case, you may have to decide which testimony to believe and  
2 which testimony not to believe. You may believe everything a witness says, or part of it, or none  
3 of it.

4 In considering the testimony of any witness, you may take into account:

- 5 1. the opportunity and ability of the witness to see or hear or know the things testified  
6 to;
- 7 2. the witness' memory;
- 8 3. the witness' manner while testifying;
- 9 4. the witness' interest in the outcome of the case and any bias or prejudice;
- 10 5. whether other evidence contradicted the witness' testimony;
- 11 6. the reasonableness of the witness' testimony in light of all the evidence; and
- 12 7. any other factors that bear on believability.

13 The weight of the evidence as to a fact does not necessarily depend on the number of  
14 witnesses who testify.

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1           You have heard testimony from persons who, because of education or experience, are  
2 permitted to state opinions and the reasons for their opinions.

3           Opinion testimony should be judged just like any other testimony. You may accept it or  
4 reject it, and give it as much weight as you think it deserves, considering the witness' education  
5 and experience, the reasons given for the opinion, and all the other evidence in the case.  
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INSTRUCTION 7



1 Certain charts and summaries that have not been received in evidence have been shown to  
2 you in order to help explain the contents of books, records, documents, or other evidence in the  
3 case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the  
4 facts or figures shown by the evidence in the case, you should disregard these charts and summa-  
5 ries and determine the facts from the underlying evidence.

1           When a person is unavailable to testify at trial, the deposition of that person may be used at  
2 the trial. A deposition is the sworn testimony of a witness taken before trial. The witness is  
3 placed under oath to tell the truth and lawyers for each party may ask questions. The questions and  
4 answers are recorded.

5           Deposition testimony is entitled to the same consideration and is to be judged, insofar as  
6 possible, in the same way as if the witness had been present to testify.

7           Do not place any significance on the behavior or tone of voice of any person reading the  
8 questions or answers.

1 All persons are equal before the law and a corporation is entitled to the same fair and  
2 conscientious consideration by you as any other person.  
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INSTRUCTION 10

1 I am now going to instruct you on the law as it applies to the Class's claims. The Court has  
2 previously determined that Vision is liable to the Class, as damages, for the amount of hazardous  
3 duty bonus that it received on behalf of the Class of pilots and flight attendants, but failed to pay to  
4 members of the Class.

5 You may award reasonable damages to compensate the Class. Whether any of the damages  
6 elements have been proven by the evidence is for you to determine. Neither sympathy nor  
7 speculation is a proper basis for determining damages. However, absolute certainty as to the  
8 damages is not required. The Class is only required to prove damage by a preponderance of the  
9 evidence.

1           When a party has the burden of proof on any claim by a preponderance of the evidence, it  
2 means you must be persuaded by the evidence that the claim is more probably true than not true.

3           You should base your decision on all of the evidence, regardless of which party presented it.  
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INSTRUCTION 12

1           When you retire, you should elect one member of the jury as your presiding juror. That  
2 person will preside over the deliberations and speak for you here in court.

3           You will then discuss the case with your fellow jurors to reach agreement if you can do so.  
4 Your verdict must be unanimous.

5           Each of you must decide the case for yourself, but you should do so only after you have  
6 considered all of the evidence, discussed it fully and with the other jurors, and listened to the  
7 views of your fellow jurors.

8           Do not be afraid to change your opinion if the discussion persuades you that you should.  
9 Do not come to a decision simply because other jurors think it is right.

10           It is important that you attempt to reach a unanimous verdict but, of course, only if each of  
11 you can do so after having made your own conscientious decision. Do not change an honest belief  
12 about the weight and effect of the evidence simply to reach a verdict.

1 If it becomes necessary during your deliberations to communicate with me, you may send a  
2 note through the bailiff, signed by your presiding juror or by one or more members of the jury. No  
3 member of the jury should ever attempt to communicate with me except by a signed writing; and I  
4 will communicate with any member of the jury on anything concerning the case only in writing, or  
5 here in open court. If you send out a question, I will consult with the parties before answering it,  
6 which may take some time. You may continue your deliberations while waiting for the answer to  
7 any question. Remember that you are not to tell anyone—including me—how the jury stands,  
8 numerically or otherwise, until after you have reached a unanimous verdict or have been dis-  
9 charged. Do not disclose any vote count in any note to the court.

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**INSTRUCTION 14**

1 A verdict form has been prepared for you. After you have reached unanimous agreement  
2 on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it,  
3 and advise the Court that you are ready to return to the courtroom.  
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INSTRUCTION 15